IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Chander v. Board of Revenue & Ors.

S.B.CIVIL WRIT PETITION NO.2491/1992
under Article 226 of the Constitution of India.

Date of Order : 5th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioner.
Mr. Sudhir Sharma, for the respondents.

BY THE COURT :

Heard learned counsel for the parties.

The facts required to be noticed to adjudicate instant writ petition are that a land measuring 3 bighas and 15 biswas was allotted under Bhakhra Project (Government Land Allotment and Sale) Rules, 1955 (hereinafter referred to as “the Rules of 1955”) in chak 8 KRW Square No.84/117, kila No.1, 2 and 10 and also in chak No.3 SDS Murrabba No.83/117 Kila No.15 to Shri Bhagirath by competent authority. Aforesaid Shri Bhagirath was ejected from the aforesaid land as he transferred the land illegally to

certain other persons. Shri Bhagirath was ejected from land after following the procedure prescribed under Section 175 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”).

The land from which Shri Bhagirath was ejected was subsequently allotted to the petitioner by an order dated 4.8.1981 under the Rules of 1955 under “Antyodaya” Scheme being a person belonging to below poverty line.

The allotment made in favour of the petitioner was challenged by Smt. Mamkaur widow of Bhagirath by way of filing an appeal before the Revenue Appellate Authority, Bikaner. The Revenue Appellate Authority, Bikaner by an order dated 30.8.1982 accepted the appeal preferred by Smt.Mamkaur by directing Sub Divisional Magistrate, Hanumangarh to reconsider the issue with regard to allotment of land to the petitioner. The Sub Divisional Magistrate, Hanumangarh in pursuance of the order dated 30.8.1982 reconsidered the matter afresh and by order dated 27.3.1984 allotted the land in dispute to Smt.Mamkaur. The Sub Divisional Magistrate, Hanumangarh while cancelling the allotment made in favour of the petitioner and making allotment in favour of Smt.Mamkaur held that in view of provisions of sub-rule(3) of Rule 3 of the Rules of 1955 the land from which Shri Bhagirath, a person belonging to Scheduled

Caste, was rejected, therefore, it could have been allotted to a member of Scheduled Caste only. The Sub Divisional Magistrate held that the allotment could not be made in favour of petitioner Ram Chander being Kumhar by caste.

The petitioner being aggrieved by the order dated 27.3.1984 passed by Sub Divisional Magistrate, Hanumangarh preferred an appeal before Revenue Appellate Authority, Bikaner but the same was also rejected by judgment dated 15.12.1984. The validity of judgment dated 15.12.1984 was also challenged by the petitioner by way of filing a revision petition before the Board of Revenue, Rajasthan, Ajmer under Rule 18 (2) of the Rules of 1955. The Board of Revenue, Rajasthan, Ajmer also rejected the revision petition by judgment dated 4.3.1992. The Board of Revenue while affirming the orders passed by the Sub Divisional Magistrate, Hanumangarh and the Revenue Appellate Authority, Bikaner held that the land which was allotted to the petitioner became available on ejectment of Shri Bhagirath who was a member of Scheduled Caste, therefore, in view of sub-rule(3) of Rule 3 of the Rules of 1955 the same could have been allotted to a person belonging to Scheduled Caste only. Being aggrieved by the orders passed by the Sub Divisional Magistrate, Hanumangarh, Revenue Appellate Authority, Bikaner and the Board of Revenue, Rajasthan, Ajmer, the instant writ petition is

preferred by the petitioner under Articles 226 and 227 of the Constitution of India.

No reply to the writ petition has been filed on behalf of the respondents.

The contention of counsel for the petitioner is that the orders impugned suffer from manifest error which requires interference of this Court while exercising extraordinary jurisdiction as the courts below failed to appreciate that sub-rule(3) of Rule 3 of the Rules of 1955 came into force being added to sub-rule(3) of the Rules of 1955 under a notification dated 25.11.1983 whereas the land in dispute was allotted to the petitioner on 4.8.1981, as such sub-rule(3) has been wrongly applied in present case.

It is admitted position between the parties that the land was allotted to the petitioner by an order dated 4.8.1981 and in compliance of the order of allotment a patta was given by the competent authority to the petitioner on 7.8.1981. The possession of the land was also given to the petitioner immediately thereafter. Sub-rule(3) of Rule 3 of the Rules of 1955 was added to Rule 3 under a notification dated 25.11.1983. The relevant portion of the notification dated 25.11.1983 whereby sub-rule(3) was added to Rule 3 of the Rules of 1955, reads as under:-

> "2: After Sub Rule-2 of Rule 3 of the said Rules the following new sub-rules shall be added namely:-
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> (3)- The land belonging to the member of Scheduled Castes or Scheduled Tribes which vests in the State Government under Section 175, 176 of Rajasthan Tenancy Act, 1955 and under Sections 13 and 14 of the Rajasthan Colonisation Act, 1954, shall be allotted only to a members of Scheduled Castes and Scheduled Tribes respectively in accordance with the provisions of these Rules."

From the facts stated above, it is quite clear that the day on which land was allotted to the petitioner, sub-rule(3) of Rule 3 of the Rules of 1955 was not at all in existence. In view of it, the bar with regard to allotment of a land to a person belonging to the caste other than Scheduled Caste and Scheduled Tribe was not there at the time of allotment of land to the petitioner. It is true that when Sub Divisional Magistrate, Hanumangarh decided the issue with regard to allotment of land to the petitioner in pursuance of the directions given by the Revenue Appellate Authority, Bikaner by judgment dated 30.8.1992 sub-rule(3) was in force. However, the same could have not been applied in present case as the Sub Divisional Magistrate was reconsidering the matter and he was required to confine himself to the legal position as it was available on the day the land was allotted. The subsequent change in law could not be

made applicable while reconsidering an issue. It is worthwhile to note that sub-rule(3) of Rule 3 of the Rules of 1955 is having no retrospective application. Even otherwise, a right already accrued cannot be taken away even by retrospective application of law.

In view of whatever stated above, this writ petition deserves acceptance. The same, therefore, is allowed. The orders impugned dated 4.3.1992 passed by Board of Revenue, Rajasthan, Ajmer; dated 15.12.1984 passed by Revenue Appellate Authority, Bikaner and dated 27.3.1984 passed by Sub Divisional Magistrate, Hanumangarh are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.